

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA CARMICHAEL,

Plaintiff,

v

CASE NO.
HON.
MAG.

MENARD, INC.,

Defendant.

Joshua T. McFarland (P75437)
Jay Trucks & Associates, P.C.
Attorneys for Plaintiff
600 Pine Street
Clare, MI 48617
(989) 386-3456/Fax: 989-386-7470
josh@jtrucks.com

David A. Couch (P57010)
Garan Lucow Miller, P.C.
Attorneys for Defendant
665 Seward Avenue N.W., Ste. 302
Grand Rapids, MI 49504
(616) 742-5500/Fax: 616-742-5566
dcouch@garanlucow.com

**NOTICE OF REMOVAL OF CAUSE TO THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TO: Joshua T. McFarland
Attorneys for Plaintiff

NOW COMES the Defendant, by and through its attorneys Garan Lucow Miller, P.C., and in support of this Notice of Removal of Cause to the United States District Court for the Western District of Michigan, Southern Division, states as follows:

1. That on or about September 7, 2023, the Plaintiff commenced this cause of action in the Circuit Court for the County of Mecosta, State of Michigan, by filing a Summons and Complaint against the Defendant, Menard, Inc. (**Exhibit A**, Plaintiff's Complaint).

2. That on or about September 26, 2023, the Plaintiff did cause the Summons and Complaint to be served on Defendant, Menard, Inc. through its registered agent, CSC. (**Exhibit B**).

3. That this civil action is a suit at common law for negligence, and the amount in controversy, inclusive of interest and costs, and upon information and belief and based upon representations about Ms. Carmichael's medical liens and the possible need for future treatment, is now believed to be in excess of the sum of \$75,000 and otherwise within the original jurisdiction of this Court pursuant to 28 USC §1332(a).

5. That the Plaintiff is seeking damages as the result of an incident that allegedly occurred on December 3, 2022 against the Defendant which is described in Plaintiff's Complaint in Paragraphs 5 through 11 of **Exhibit A**.

6. The Plaintiff alleges that she was present in the Defendant's store, located in Big Rapids, MI, on December 3, 2022 when, due to the Defendant's negligence, she slipped and fell to the ground with great force and violence and suffered severe, grievous, and permanent personal injuries, disabilities, and damages, the full extent and character of which are currently unknown but which include, and are not limited to, her neck, right shoulder, left knee, low back, pelvis, right hip, and extreme physical and emotional suffering.

7. Based upon the foregoing serious allegations as contained in the Plaintiff's Complaint, Ms. Carmichael's claimed amount in controversy against the Defendant is now reasonably believed to have a value in excess of the sum of \$75,000 and is now otherwise squarely within the jurisdiction of this Court pursuant to 28 USC §1332(a).

8. The Defendant submits that this action involves a controversy between citizens of different states, in that:

(A) Plaintiff, Linda Carmichael, was, and at the time of the commencement of this action, a citizen of the County of Osceola, State of Michigan. (**Exhibit A**, paragraph 1);

(B) Defendant, Menard, Inc., was, and at the time of the commencement of this action, and remains incorporated under the laws of the State of Wisconsin, and by virtue of said incorporation was, and is, a citizen of the State of Wisconsin, and is not a citizen of the State of Michigan; and

(C) Defendant, Menard, Inc., had, at the time of the commencement of this action, and now has, its principal place of business in the State of Wisconsin, and is not a citizen of the State of Michigan by reason of its principal place of business.

9. That this Notice of Removal is not being filed with this Court within 30 days of the Plaintiff's original service of the Summons and Complaint on the agent for Defendant, Menard, Inc. However, the Plaintiff's initial pleading did not pray for damages or represent damages in excess of \$75,000, but it has since been determined that the Plaintiff intends to seek an amount within this Court's jurisdiction, and not more than one year has passed. The Plaintiff kindly granted the Defendant a requested extension upon which the defense also relies and requests that the Court deem the removal to otherwise be proper as required by 28 USC §1446.

10. That written notice of the filing of this removal has been given to the adverse party as required by law, and a copy of the Notice of Removal has been filed with the Clerk of the Court for the County of Mecosta, State of Michigan by regular mail.

11. Attached is a copy of all process and pleadings which were served upon the Defendant in this cause. (**Exhibits A and B**).

WHEREFORE, the Defendant respectfully requests that this Honorable Court enter an order removing this cause of action from the Circuit Court for the County of Mecosta, State of Michigan, to the United States District Court for the Western District of Michigan, Southern Division.

Dated: November 7, 2023

GARAN LUCOW MILLER, P.C.
Attorneys for Defendant

By: /s/ David A. Couch
David A. Couch (P57010)

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: All ECF Attorney(s) of Record on this case.

I hereby certify that I have mailed by United States Postal Service and emailed the paper to the following:

Joshua T. McFarland
Jay Trucks & Associates, P.C.
600 Pine Street
Clare, MI 48617
josh@jtrucks.com

/s/ Stacie L. Hancock
Stacie L. Hancock

EXHIBIT A

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

CASE NO.

STATE OF MICHIGAN
JUDICIAL DISTRICT
49th JUDICIAL CIRCUIT
COUNTY

SUMMONS

23-

27054 NO

Court address

400 Elm Street, Big Rapids, MI 49307

Court telephone no.
(231) 592-0784

Plaintiff's name, address, and telephone no.

LINDA CARMICHAEL
1446 70th Avenue
Evart, MI 49631

Defendant's name, address, and telephone no.

MENARD, INC.
14777 215th Avenue
Big Rapids, MI 49307

Plaintiff's attorney, bar no., address, and telephone no.

JOSHUA T. MCFARLAND (P75437)
JAY TRUCKS & ASSOCIATES, P.C.
600 Pine Street, Clare, MI 48617
(989) 386-3456, josh@jtrucks.com

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case.

There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person who are the subject of the complaint.

There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.

It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date *	Court clerk
9-11-2023	10-11-2023	Marcell Purcell ev

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Summons (3/23)

Case No. 23- -NO

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

I served personally by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and complaint, together with the attachments listed below, on:

I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

on _____ Date and time _____

on _____

Signature

on behalf of

Name (type or print)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

LINDA CARMICHAEL,

Plaintiff,

-vs-

MENARD, INC.,

Defendant.

COMPLAINT

Case No. 23-

-NO

27054

COURTNEY GARNER
707-524-1113 ext 29
46TH CIRCUIT COURT
COUNTY OF MECOSTA

FILED
11/07/23
27054

JOSHUA T. MCFARLAND (P75437)
JAY TRUCKS & ASSOCIATES, P.C.
Attorney for Plaintiff
600 Pine Street
Clare, MI 48617
(989) 386-3456
josh@jtrucks.com

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the Complaint.

Plaintiff, LINDA CARMICHAEL, says:

1. Plaintiff is a resident of Evart, Osceola County, Michigan.
2. Defendant, MENARD, INC., is a business which operates a store located in Big Rapids, Mecosta County, Michigan.
3. The incident that is the subject matter of this Complaint occurred in Defendant's Big Rapids store in Mecosta County, Michigan.

4. On December 3, 2022, Plaintiff was an invitee at Defendant's business, as she was shopping at Defendant's store located at 14777 215th Avenue, Big Rapids, MI 49307.

5. While present in the store, Plaintiff slipped and fell in a shopping aisle.

6. After her fall, Plaintiff discovered that she had slipped and fell due to the presence of a puddle of water, which was caused by a leak in the roof of Defendant's store.

7. Despite the presence of a roof leak and water on the floor, no caution signage was present to warn patrons in the store of the presence of this hazard.

8. At all relevant times, Defendant owed Plaintiff, an invitee, the following duties and obligations, including, but not limited to:

- a. To maintain the premises in a reasonably safe condition;
- b. To exercise due care and caution in the maintenance of its premises;
- c. To inspect for hazards, dangers, and improper conditions at the premises of which they knew or should have known;
- d. To warn, advise, and instruct invitees regarding potentially dangerous conditions on the premises of which they knew or should have known;
- e. To repair all defective and dangerous conditions on the premises of which they knew or should have known.

9. Notwithstanding the existence of the above duties, Defendant negligently breached all of the aforementioned duties and obligations, including, but not limited to, the following:

- a. Failing to inspect the premises for hazards, including the presence of roof leaks and water on the floor;
- b. Failing to remedy any hazards such as the one Plaintiff encountered;
- c. Failing to warn of potential hazards like the one Plaintiff encountered.

10. As a result of Defendant's negligent acts and omissions, Plaintiff sustained an injury to her neck, right shoulder, left knee, lower back, pelvis, right hip, and all other injuries as the proofs may show.

11. As a direct result of the injuries, Plaintiff has and will or may suffer the following damages:

- a. Physical pain;
- b. Emotional suffering;
- c. Mental anguish and psychological trauma;
- d. Fright and shock;
- e. Denial of social pleasure and enjoyment;
- f. Embarrassment, humiliation, or mortification;
- g. Disability;
- h. Disfigurement;
- i. Aggravation of a pre-existing, dormant, or latent ailment or condition;

- j. Future damages, pain, and limitations arising from continued use and the aging process in combination with the injury;
- k. Medical bills and liens related to this incident, which are the responsibility of Defendant; and
- l. Any and all other damages as the proofs may show.

WHEREFORE, Plaintiff demands judgment from Defendant for whatever amount Plaintiff is found to be entitled in law and equity which is in excess of Twenty-five Thousand (\$25,000.00) Dollars, together with costs, interest, and attorney fees.

Depositions will be used for all permitted purposes, MCR 2.302(h), and filed, MCR 306(f)(3).

Plaintiff requests scheduling of a pre-trial, MCR 2.401.

Plaintiff moves for case evaluation and mediation, MCR 2.403.

Dated: September 7, 2023



JOSHUA T. MCFARLAND (P75437)
JAY TRUCKS & ASSOCIATES, P.C.
Attorney for Plaintiff
600 Pine Street
Clare, MI 48617
(989) 386-3456
josh@jtrucks.com

EXHIBIT B



null / ALL

Transmittal Number: 27712908

Date Processed: 09/26/2023

Notice of Service of Process

Primary Contact: Jaime Schroeder
Menard, Inc.
5101 Menard Dr
Eau Claire, WI 54703-9604

Electronic copy provided to: Jim McMenomy
Meghan Olson
Nikki LaPointe
Todd Lemanski

Entity: Menard, Inc.
Entity ID Number 0033810

Entity Served: Menard, Inc

Title of Action: Linda Carmichael vs. Menard, Inc.

Matter Name/ID: Linda Carmichael vs. Menard, Inc. (14650052)

Document(s) Type: Summons/Complaint

Nature of Action: Personal Injury

Court/Agency: 49th Circuit Court, MI

Case/Reference No: 23-27054

Jurisdiction Served: Michigan

Date Served on CSC: 09/26/2023

Answer or Appearance Due: 21 Days

Originally Served On: CSC

How Served: Certified Mail

Sender Information: Jay Trucks & Associates, P.C.
989-386-3456

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA CARMICHAEL,

Plaintiff,

v

CASE NO.

HON.

MAG.

MENARD, INC.,

Defendant.

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Grand Rapids, MI 49504
(616) 742-5500/Fax: 616-742-5566
dcouch@garanlucow.com

AFFIDAVIT

STATE OF MICHIGAN)
) ss
COUNTY OF KENT)

DAVID A. COUCH, being first duly sworn, deposes and says, that he is associated with the law firm of GARAN LUCOW MILLER, P.C. and that he has been charged with the defense and representation of MENARD, INC., Defendant herein; that in such capacity he has prepared the foregoing Notice of Removal of Cause to the United States District Court for the Western District of Michigan, Southern Division, that the matters set forth in said Notice are true, except as to those matters stated herein to be upon information and belief as to which matters he is informed and believes same to be true.

Further deponent sayeth not.

By: /s/ David A. Couch

David A. Couch (P57010)

Subscribed and sworn to before me
This 7th day of November 2023.

/s/ Stacie L. Hancock

Notary Public – Stacie L. Hancock
County of Kent, State of Michigan
Acting in Kent County, MI
My commission expires: 01/08/2024

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

LINDA CARMICHAEL,

Plaintiff,

CASE NO. 23-27054-NI

v

HON. AMY C. CLAPP

MENARD, INC.,

Defendant.

Joshua T. McFarland (P75437)
Jay Trucks & Associates, P.C.
Attorneys for Plaintiff
600 Pine Street
Clare, MI 48617
(989) 386-3456
josh@jtrucks.com

David A. Couch (P57010)
Garan Lucow Miller, P.C.
Attorneys for Defendant
665 Seward Avenue N.W., Ste. 302
Grand Rapids, MI 49504
(616) 742-5500
dcouch@garanlucow.com

NOTICE OF FILING OF REMOVAL

TO: Clerk of the Court
and
Joshua T. McFarland

PLEASE TAKE NOTICE that a Notice of Removal of the above-entitled action from the Mecosta County Circuit Court, State of Michigan, to the United States District Court for the Western District of Michigan, a copy of which is attached hereto, was duly filed on November 7, 2023, in the United States District Court for the Western District of Michigan.

Dated: November 7, 2023

GARAN LUCOW MILLER, P.C.
Attorneys for Defendant

By: /s/ David A. Couch

David A. Couch (P57010)

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by faxing, mailing, electronic mailing, hand delivering, and/or overnighting same to them at their respective business addresses as disclosed by the pleadings of record herein with postage fully prepaid thereon on November 7, 2023.

/s/ *Stacie L. Hancock*

Stacie L. Hancock